

The following comments are in reference to your proposed amendments to the Telemarketing Sales Rule (RIN: 3084-0098), posted at [www.ftc.gov/os/2004/11/041112tsrfrn.pdf](http://www.ftc.gov/os/2004/11/041112tsrfrn.pdf).

Among other changes, the proposed amendments would allow businesses to contact individuals currently included in the Do Not Call (DNC) registry, provided the existence of an "established business relationship" between seller and consumer, as defined in 16 CFR 301.2(n) (5). Based on the loose definition of such relationships, this amendment would allow an increase in unwanted pre-recorded messages (PRMs). The additional regulations proposed for such calls place an unreasonable burden on individuals who choose to (re)assert their DNC rights.

Common business practices of sharing customer information, as well as the large size and diverse nature of corporate holdings, ensure that rank of businesses with which individuals could be said to have "established business relationships" under this definition is a vast one. Moreover, as the Commission notes, "it may be more economical for companies to contact consumers via prerecorded messages... so the volume of commercial calls that consumers receive may increase" (8). The overall effect is to negate a portion of individuals' DNC rights.

In recognition of this fact, the Commission has proposed additional opt-out possibilities: "the message would either allow the called party to speak to a sales representative by pressing a button on the telephone keypad during the message, or, in the alternative, they [sic] would provide a toll-free number that the called party may call to speak to a sales representative" (5-6). These two requirements, either of which is insufficient, together constitute an unjustifiable burden on citizens who wish to assert their DNC rights.

Following discussion of the relative ease of asserting DNC rights (8-11) fails to establish definite guidelines on this crucial point. The suggestion that an opt-out message appear directly after the required "prompt oral disclosures" is essentially meaningless, as those disclosures, as listed in Section 310.4(d), could be reasonably construed to include the entire body of the PRM (e.g. disclosure (3) the nature of the goods or services). Listeners would be forced to endure complete sales pitches before having an opportunity to assert their rights.

Should businesses opt to divert DNC requests to a toll-free line, the overall time burden for a citizen asserting his/her DNC rights could include not only the complete text of the PRM, but also the process of contacting the initiating business to request that their rights be respected. Should businesses opt to offer an interactive feature ("pressing a button during the message to connect to a sales representative or an automated system to make a DNC request" (10)), individuals could also conceivably be subject to long waits before speaking with such a representative; such waits would again be at the discretion of the initiating business. The Commission's concern for "the costs to industry of requiring this mechanism in each message" (14) is misplaced; the individual bears the burden of time and effort.

Furthermore, as some PRMs will inevitably be delivered to answering machines or similar devices, a toll-free number will have to be included in each PRM, whether an interactive opt-out feature is used or not. Citizens will clearly be daunted by the prospect of replaying several PRMs, each time noting down the appropriate toll-free number, and then placing several calls of unknown length in order to assert their opt-out rights.

Should this proposal be adopted, I recommend the establishment of a time limit as suggested in Q#7 (30). The first 30 seconds of the PRM, including any dead time (whether two seconds or a reduced amount) must fulfill each of the disclosures listed in 310.4(d), followed immediately by the ability to opt-out interactively and a toll-free number for the same activity. The ability to opt-out interactively and the toll-free number should be repeated at the end of the PRM. The total length of the PRM, including all dead time and the required DNC information, should also be regulated in consideration of individuals using answering machines or similar devices.

Your concern for the DMA Petition addressed in III is well founded. As this organization has offered no reasons, compelling or otherwise, to alter current practice – save its unwillingness to comply – the Commission need not rewrite its policies. In particular, the DMA would need to prove that proposed changes would not result in the discriminatory practices described pp. 17-18.